

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

HERIBERTO CASTRO-GUITERREZ,

No. 2:21-cv-2128 KJM DB P

Petitioner,

ORDER

v.

DORIS L. SHOCKLEY,

Respondent.

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 1, 2022, the magistrate judge filed findings and recommendation, which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within thirty days. Petitioner has filed objections to the findings and recommendations and he requests a certificate of appealability under 28 U.S.C. § 2253(c).

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis. Accordingly, they will be adopted in full.

1 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has
2 made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The
3 court must either issue a certificate of appealability indicating which issues satisfy the required
4 showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).
5 Where, as here, the petition is dismissed on procedural grounds, a certificate of appealability
6 “should issue if the prisoner can show: (1) ‘that jurists of reasons would find it debatable whether
7 the district court was correct in its procedural ruling’; and (2) ‘that jurists of reason would find it
8 debatable whether the petition states a valid claim of the denial of a constitutional right.’” *Morris*
9 *v. Woodford*, 229 F.3d 775, 780 (9th Cir. 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484
10 (2000)). Petitioner has not shown that jurists of reasons would find it debatable whether the
11 instant action is a second or successive habeas petition under 28 U.S.C. § 2253, or that he has
12 obtained the authorization from the court of appeals required to proceed with such a petition.

13 || Accordingly, IT IS HEREBY ORDERED that:

14 1. The findings and recommendations filed February 1, 2022 are adopted in full;
15 2. The petition is dismissed without prejudice;
16 3. Petitioner's request for a certificate of appealability is denied; and
17 4. The clerk of court is directed to close this case.

18 | DATED: May 23, 2022.

CHIEF UNITED STATES DISTRICT JUDGE